

AMENDED IN ASSEMBLY JUNE 12, 2006

AMENDED IN SENATE APRIL 17, 2006

SENATE BILL

No. 1847

**Introduced by Committee on Banking, Finance and Insurance
(Senators Speier (Chair), Cox, Denham, Florez, Hollingsworth,
Lowenthal, Machado, Maldonado, Murray, Romero, and Scott)**

March 14, 2006

An act to amend Sections 791.13, 1060, 1749.85, 1872.83, 1874.8, 10089.83, 12922, 12961, 12962, and 12967 of, to amend and renumber Section 10133.66 of, and to repeal Sections 742.435 and 1751.8 of, the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1847, as amended, Committee on Banking, Finance and Insurance. Insurance: privacy.

Under current law the Insurance Commissioner investigates certain matters and makes reports to the Legislature by 2001 and 2002.

This bill would repeal those provisions.

Under existing law an insurance institution, agent, or insurance-support organization shall not disclose any personal or privileged information about an individual collected or received in connection with an insurance transaction unless the disclosure comes within specified exceptions generally designed to facilitate the legitimate transaction of insurance.

This bill would add an exception to the general rule of nondisclosure when the disclosure is to an insured when the information disclosed is from an accident report, supplemental report, investigative report or the actual report from a government agency or

is an exact copy of an accident report or other report which the insured is entitled to obtain under other specified provisions of law.

Existing law requires the Insurance Commissioner and the Department of Insurance to submit various reports to the Governor and the Legislature. Existing law also requires the Insurance ~~Commission~~ *Commissioner* to submit an annual report to the Governor.

This bill would require, instead, that the information required in those various reports be provided in the commissioner's annual report to the Governor which would also be provided to the Legislature and to the committees of the Senate and Assembly having jurisdiction over insurance.

Existing law requires certain persons to receive instruction in proper methods for estimating the replacement value of structures and provides that others shall not estimate the replacement value of a structure.

This bill would specifically provide that these provisions shall not be construed to preclude licensed contractors, and real estate appraisers from estimating the replacement value of a structure, as specified.

This bill would declare that it is to take effect immediately as an urgency statute. However, only the provisions relating to estimating the replacement value of structures would become operative immediately. The remainder would become operative January 1, 2007.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 742.435 of the Insurance Code is
- 2 repealed.
- 3 SEC. 2. Section 791.13 of the Insurance Code is amended to
- 4 read:
- 5 791.13. An insurance institution, agent, or insurance-support
- 6 organization shall not disclose any personal or privileged
- 7 information about an individual collected or received in
- 8 connection with an insurance transaction unless the disclosure is:
- 9 (a) With the written authorization of the individual, and meets
- 10 either of the conditions specified in paragraph (1) or (2):

1 (1) If such authorization is submitted by another insurance
2 institution, agent, or insurance-support organization, the
3 authorization meets the requirement of Section 791.06.

4 (2) If such authorization is submitted by a person other than an
5 insurance institution, agent, or insurance-support organization,
6 the authorization is:

7 (A) ~~Dated~~; *Dated*.

8 (B) Signed by the individual.

9 (C) Obtained one year or less prior to the date a disclosure is
10 sought pursuant to this section.

11 (b) To a person other than an insurance institution, agent, or
12 insurance-support organization, provided such disclosure is
13 reasonably necessary:

14 (1) To enable such person to perform a business, professional
15 or insurance function for the disclosing insurance institution,
16 agent, or insurance-support organization or insured and such
17 person agrees not to disclose the information further without the
18 individual's written authorization unless the further disclosure:

19 (A) Would otherwise be permitted by this section if made by
20 an insurance institution, agent, or insurance-support organization;
21 or

22 (B) Is reasonably necessary for such person to perform its
23 function for the disclosing insurance institution, agent, or
24 insurance-support organization.

25 (2) To enable such person to provide information to the
26 disclosing insurance institution, agent or insurance-support
27 organization for the purpose of:

28 (A) Determining an individual's eligibility for an insurance
29 benefit or payment; or

30 (B) Detecting or preventing criminal activity, fraud, material
31 misrepresentation or material nondisclosure in connection with
32 an insurance transaction.

33 (c) To an insurance institution, agent, insurance-support
34 organization or self-insurer, provided the information disclosed is
35 limited to that which is reasonably necessary under either
36 paragraph (1) or (2):

37 (1) To detect or prevent criminal activity, fraud, material
38 misrepresentation or material nondisclosure in connection with
39 insurance transactions; or

(2) For either the disclosing or receiving insurance institution, agent or insurance-support organization to perform its function in connection with an insurance transaction involving the individual.

(d) To a medical-care institution or medical professional for the purpose of any of the following:

(1) Verifying insurance coverage or benefits.

(2) Informing an individual of a medical problem of which the individual may not be aware.

(3) Conducting operations or services audit, provided only such information is disclosed as is reasonably necessary to accomplish the foregoing purposes.

(e) To an insurance regulatory authority; or

(f) To a law enforcement or other governmental authority pursuant to law.

(g) Otherwise permitted or required by law.

(h) In response to a facially valid administrative or judicial order, including a search warrant or subpoena.

(i) Made for the purpose of conducting actuarial or research studies, provided:

(1) No individual may be identified in any actuarial or research report.

(2) Materials allowing the individual to be identified are returned or destroyed as soon as they are no longer needed.

(3) The actuarial or research organization agrees not to disclose the information unless the disclosure would otherwise be permitted by this section if made by an insurance institution, agent or insurance-support organization.

(j) To a party or a representative of a party to a proposed or consummated sale, transfer, merger or consolidation of all or part of the business of the insurance institution, agent or insurance-support organization, provided:

(1) Prior to the consummation of the sale, transfer, merger, or consolidation only such information is disclosed as is reasonably necessary to enable the recipient to make business decisions about the purchase, transfer, merger, or consolidation.

(2) The recipient agrees not to disclose the information unless the disclosure would otherwise be permitted by this section if made by an insurance institution, agent or insurance-support organization.

1 (k) To a person whose only use of such information will be in
2 connection with the marketing of a product or service, provided:

3 (1) No medical-record information, privileged information, or
4 personal information relating to an individual's character,
5 personal habits, mode of living, or general reputation is
6 disclosed, and no classification derived from such information is
7 disclosed; or

8 (2) The individual has been given an opportunity to indicate
9 that he or she does not want personal information disclosed for
10 marketing purposes and has given no indication that he or she
11 does not want the information disclosed; and

12 (3) The person receiving such information agrees not to use it
13 except in connection with the marketing of a product or service.

14 (l) To an affiliate whose only use of the information will be in
15 connection with an audit of the insurance institution or agent or
16 the marketing of an insurance product or service, provided the
17 affiliate agrees not to disclose the information for any other
18 purpose or to unaffiliated persons.

19 (m) By a consumer reporting agency, provided the disclosure
20 is to a person other than an insurance institution or agent.

21 (n) To a group policyholder for the purpose of reporting
22 claims experience or conducting an audit of the insurance
23 institution's or agent's operations or services, provided the
24 information disclosed is reasonably necessary for the group
25 policyholder to conduct the review or audit.

26 (o) To a professional peer review organization for the purpose
27 of reviewing the service or conduct of a medical-care institution
28 or medical professional.

29 (p) To a governmental authority for the purpose of
30 determining the individual's eligibility for health benefits for
31 which the governmental authority may be liable.

32 (q) To a certificate holder or policyholder for the purpose of
33 providing information regarding the status of an insurance
34 transaction.

35 (r) To a lienholder, mortgagee, assignee, lessor, or other
36 person shown on the records of an insurance institution or agent
37 as having a legal or beneficial interest in a policy of insurance.
38 The information disclosed shall be limited to that which is
39 reasonably necessary to permit the person to protect his or her

1 interest in the policy and shall be consistent with Article 5.5
2 (commencing with Section 770).

3 (s) To an insured when the information disclosed is from an
4 accident report, supplemental report, investigative report or the
5 actual report from a government agency or is ~~an exact~~ a copy of
6 an accident report or other report which the insured is entitled to
7 obtain under Section 20012 of the Vehicle Code or subdivision
8 (f) of Section 6254 of the Government Code.

9 SEC. 3. Section 1060 of the Insurance Code is amended to
10 read:

11 1060. The commissioner shall transmit all of the following to
12 the Governor, the Legislature, and to the committees of the
13 Senate and Assembly having jurisdiction over insurance in the
14 annual report submitted pursuant to Section 12922:

15 (a) The names of the persons proceeded against under this
16 article.

17 (b) Whether such persons have resumed business or have been
18 liquidated or have been mutualized.

19 (c) Such other facts as will acquaint the Governor, the
20 policyholders, creditors, shareholders and the public with his *or*
21 *her* proceedings under this article.

22 SEC. 4. Section 1749.85 of the Insurance Code is amended to
23 read:

24 1749.85. (a) The curriculum committee shall, in 2006, make
25 recommendations to the commissioner to instruct fire and
26 casualty broker-agents and personal lines broker-agents and
27 applicants for fire and casualty broker-agent and personal lines
28 broker-agent licenses in proper methods of estimating the
29 replacement value of structures, and of explaining various levels
30 of coverage under a homeowners' insurance policy. Each
31 provider of courses based upon this curriculum shall submit its
32 course content to the commissioner for approval.

33 (b) A person who is not an insurer underwriter or actuary or
34 other person identified by the insurer, or a licensed fire and
35 casualty broker-agent, personal lines broker-agent, contractor, or
36 architect shall not estimate the replacement value of a structure,
37 or explain various levels of coverage under a homeowners'
38 insurance policy.

1 (c) This section shall not be construed to preclude licensed
2 contractors and architects from estimating replacement value of a
3 structure.

4 (d) Notwithstanding subdivision (b), a real estate appraiser
5 may estimate the replacement value of a structure under a
6 homeowner's insurance policy. However, if the Department of
7 Insurance, by adopting a regulation, establishes standards for the
8 calculation of estimates of replacement value of a structure by
9 appraisers, on and after the effective date of the regulation a real
10 estate appraiser's estimate of replacement value under a
11 homeowner's insurance policy shall be calculated in accordance
12 with the regulation.

13 SEC. 5. Section 1751.8 of the Insurance Code is repealed.

14 SEC. 6. Section 1872.83 of the Insurance Code is amended to
15 read:

16 1872.83. (a) The commissioner shall ensure that the Fraud
17 Division aggressively pursues all reported incidents of probable
18 workers' compensation fraud, as defined in Sections 11760 and
19 11880, *and* in subdivision (a) of Section 1871.4, and in Section
20 549 of the Penal Code, and forwards to the appropriate
21 disciplinary body the names, along with all supporting evidence,
22 of any individuals licensed under the Business and Professions
23 Code who are suspected of actively engaging in fraudulent
24 activity. The Fraud Division shall forward to the Insurance
25 Commissioner or the Director of Industrial Relations, as
26 appropriate, the name, along with all supporting evidence, of any
27 insurer, as defined in subdivision (c) of Section 1877.1,
28 suspected of actively engaging in the fraudulent denial of claims.

29 (b) To fund increased investigation and prosecution of
30 workers' compensation fraud, and of willful failure to secure
31 payment of workers' compensation, in violation of Section
32 3700.5 of the Labor Code, there shall be an annual assessment as
33 follows:

34 (1) The aggregate amount of the assessment shall be
35 determined by the Fraud Assessment Commission, which is
36 hereby established. The commission shall be composed of seven
37 members consisting of two representatives of organized labor,
38 two representatives of self-insured employers, one representative
39 of insured employers, one representative of workers'

1 compensation insurers, and the President of the State
2 Compensation Insurance Fund, or his or her designee.

3 The Governor shall appoint members representing organized
4 labor, self-insured employers, insured employers, and insurers.
5 The term of office of members of the commission shall be four
6 years, and a member shall hold office until the appointment of a
7 successor. The President of the State Compensation Insurance
8 Fund shall be an ex officio, voting member of the commission.
9 Members of the commission shall receive one hundred dollars
10 (\$100) for each day of actual attendance at commission meetings
11 and other official commission business, and shall also receive
12 their actual and necessary traveling expenses incurred in the
13 performance of commission duties. Payment of per diem and
14 travel expenses shall be made from the Workers' Compensation
15 Fraud Account in the Insurance Fund, established in paragraph
16 (4), upon appropriation by the Legislature.

17 (2) In determining the aggregate amount of the assessment, the
18 Fraud Assessment Commission shall consider the advice and
19 recommendations of the Fraud Division and the commissioner.

20 (3) The aggregate amount of the assessment shall be collected
21 by the Director of Industrial Relations pursuant to Section 62.6 of
22 the Labor Code. The Fraud Assessment Commission shall
23 annually advise the Director of Industrial Relations, not later than
24 March 15, of the aggregate amount to be assessed for the next
25 fiscal year.

26 (4) The amount collected, together with the fines collected for
27 violations of the unlawful acts specified in Sections 1871.4,
28 11760, and 11880, Section 3700.5 of the Labor Code, and
29 Section 549 of the Penal Code, shall be deposited in the
30 Workers' Compensation Fraud Account in the Insurance Fund,
31 which is hereby created, and may be used, upon appropriation by
32 the Legislature, only for enhanced investigation and prosecution
33 of workers' compensation fraud and of willful failure to secure
34 payment of workers' compensation as provided in this section.

35 (c) For each fiscal year, the total amount of revenues derived
36 from the assessment pursuant to subdivision (b) shall, together
37 with amounts collected pursuant to fines imposed for unlawful
38 acts described in Sections 1871.4, 11760, and 11880, Section
39 3700.5 of the Labor Code, and Section 549 of the Penal Code,
40 not be less than three million dollars (\$3,000,000). Any funds

1 appropriated by the Legislature pursuant to subdivision (b) that
2 are not expended in the fiscal year for which they have been
3 appropriated, and that have not been allocated under subdivision
4 (f), shall be applied to satisfy for the immediately following
5 fiscal year the minimum total amount required by this
6 subdivision. In no case may that money be transferred to the
7 General Fund.

8 (d) After incidental expenses, at least 40 percent of the funds
9 to be used for the purposes of this section shall be provided to the
10 Fraud Division of the Department of Insurance for enhanced
11 investigative efforts, and at least 40 percent of the funds shall be
12 distributed to district attorneys, pursuant to a determination by
13 the commissioner with the advice and consent of the division and
14 the Fraud Assessment Commission, as to the most effective
15 distribution of moneys for purposes of the investigation and
16 prosecution of workers' compensation fraud cases and cases
17 relating to the willful failure to secure the payment of workers'
18 compensation. Each district attorney seeking a portion of the
19 funds shall submit to the commissioner an application setting
20 forth in detail the proposed use of any funds provided. A district
21 attorney receiving funds pursuant to this subdivision shall submit
22 an annual report to the commissioner with respect to the success
23 of his or her efforts. Upon receipt, the commissioner shall
24 provide copies to the Fraud Division and the Fraud Assessment
25 Commission of any application, annual report, or other
26 documents with respect to the allocation of money pursuant to
27 this subdivision. Both the application for moneys and the
28 distribution of moneys shall be public documents. Information
29 submitted to the commissioner pursuant to this section
30 concerning criminal investigations, whether active or inactive,
31 shall be confidential.

32 (e) If a district attorney is determined by the commissioner to
33 be unable or unwilling to investigate and prosecute workers'
34 compensation fraud claims or claims relating to the willful failure
35 to secure the payment of workers' compensation, the
36 commissioner shall discontinue distribution of funds allocated for
37 that county and may redistribute those funds according to this
38 subdivision.

39 (1) The commissioner shall promptly determine whether any
40 other county could assert jurisdiction to prosecute the fraud

1 claims or claims relating to the willful failure to secure the
2 payment of workers' compensation that would have been brought
3 in the nonparticipating county, and if so, the commissioner may
4 award funds to conduct the prosecutions redirected pursuant to
5 this subdivision. These funds may be in addition to any other
6 fraud prosecution funds or claims relating to the willful failure to
7 secure the payment of workers' compensation prosecution
8 otherwise awarded under this section. Any district attorney
9 receiving funds pursuant to this subdivision shall first agree that
10 the funds shall be used solely for investigating and prosecuting
11 those cases of workers' compensation fraud or claims relating to
12 the willful failure to secure the payment of workers'
13 compensation that are redirected pursuant to this subdivision and
14 submit an annual report to the commissioner with respect to the
15 success of the district attorney's efforts. The commissioner shall
16 keep the Fraud Assessment Commission fully informed of all
17 reallocations of funds under this paragraph.

18 (2) If the commissioner determines that no district attorney is
19 willing or able to investigate and prosecute the workers'
20 compensation fraud claims or claims relating to the willful failure
21 to secure the payment of workers' compensation arising in the
22 nonparticipating county, the commissioner, with the advice and
23 consent of the Fraud Assessment Commission, may award to the
24 Attorney General some or all of the funds previously awarded to
25 the nonparticipating county. Before the commissioner may award
26 any funds, the Attorney General shall submit to the
27 commissioner an application setting forth in detail his or her
28 proposed use of any funds provided and agreeing that any funds
29 awarded shall be used solely for investigating and prosecuting
30 those cases of workers' compensation fraud or claims relating to
31 the willful failure to secure the payment of workers'
32 compensation that are redirected pursuant to this subdivision.
33 The Attorney General shall submit an annual report to the
34 commissioner with respect to the success of the fraud prosecution
35 efforts of his or her office.

36 (3) Neither the Attorney General nor any district attorney shall
37 be required to relinquish control of any investigation or
38 prosecution undertaken pursuant to this subdivision unless the
39 commissioner determines that satisfactory progress is no longer
40 being made on the case or the case has been abandoned.

1 (4) A county that has become a nonparticipating county due to
2 the inability or unwillingness of its district attorney to investigate
3 and prosecute workers' compensation fraud or the willful failure
4 to secure the payment of workers' compensation shall not
5 become eligible to receive funding under this section until it has
6 submitted a new application that meets the requirements of
7 subdivision (d) and the applicable regulations.

8 (f) If in any fiscal year the Fraud Division does not use all of
9 the funds made available to it under subdivision (d), any
10 remaining funds may be distributed to district attorneys pursuant
11 to a determination by the commissioner in accordance with the
12 same procedures set forth in subdivision (d).

13 (g) The commissioner shall adopt rules and regulations to
14 implement this section in accordance with the rulemaking
15 provisions of the Administrative Procedure Act (Chapter 3.5
16 (commencing with Section 11340) of Part 1 of Division 3 of Title
17 2 of the Government Code). Included in the rules and regulations
18 shall be the criteria for redistributing funds to district attorneys
19 and the Attorney General. The adoption of the rules and
20 regulations shall be deemed to be an emergency and necessary
21 for the immediate preservation of the public peace, health, and
22 safety, or general welfare.

23 (h) The department shall report to the Governor, the
24 Legislature, to the committees of the Senate and Assembly
25 having jurisdiction over insurance, and the Fraud Assessment
26 Commission on the activities of the Fraud Division and district
27 attorneys supported by the funds provided by this section in the
28 annual report submitted pursuant to Section 12922.

29 The annual report shall include, but is not limited to, all of the
30 following information for the department and each district
31 attorney's office:

32 (1) All allocations, distributions, and expenditures of funds.

33 (2) The number of search warrants issued.

34 (3) The number of arrests and prosecutions, and the aggregate
35 number of parties involved in each.

36 (4) The number of convictions and the names of all convicted
37 fraud perpetrators.

38 (5) The estimated value of all assets frozen, penalties assessed,
39 and restitutions made for each conviction.

(6) Any additional items necessary to fully inform the Fraud Assessment Commission and the Legislature of the fraud-fighting efforts financed through this section.

(i) In order to meet the requirements of subdivision (g), the department shall submit a biannual information request to those district attorneys who have applied for and received funding through the annual assessment process under this section.

(j) Assessments levied or collected to fight workers' compensation fraud and insurance fraud are not taxes. Those funds are entrusted to the state to fight fraud and the willful failure to secure the payment of workers' compensation by funding state and local investigation and prosecution efforts. Accordingly, any funds resulting from assessments, fees, penalties, fines, restitution, or recovery of costs of investigation and prosecution deposited in the Insurance Fund shall not be deemed "unexpended" funds for any purpose and, if remaining in that account at the end of any fiscal year, shall be applied as provided in subdivision (f) and to offset or augment subsequent years' program funding.

(k) The Bureau of State Audits shall evaluate the effectiveness of the efforts of the Fraud Assessment Commission, the Fraud Division, the Department of Insurance, and the Department of Industrial Relations, as well as local law enforcement agencies, including district attorneys, in identifying, investigating, and prosecuting workers' compensation fraud and the willful failure to secure payment of workers' compensation. The report shall specifically identify areas of deficiencies. Included in this report shall be recommendations on whether the current program provides the appropriate levels of accountability for those responsible for the allocation and expenditure of funds raised from the assessment provided in this section. The Bureau of State Audits shall submit a report to the Chairperson of the Senate Committee on Labor and Industrial Relations and the Chairperson of the Assembly Committee on Insurance on or before May 1, 2004.

SEC. 7. Section 1874.8 of the Insurance Code, as amended by Section 14 of Chapter 717 of the Statutes of 2005, is amended to read:

1874.8. (a) Each insurer doing business in this state shall pay an annual fee to be determined by the commissioner, but not to

1 exceed fifty cents (\$0.50) annually for each vehicle insured under
2 an insurance policy it issues in this state, in order to fund the
3 Fraud Division and an Organized Automobile Fraud Activity
4 Interdiction Program. The commissioner shall award three to 10
5 grants for a coordinated program targeted at the successful
6 prosecution and elimination of organized automobile fraud
7 activity. The grants may only be awarded to district attorneys.

8 (b) In determining whether to award a district attorney a grant,
9 the commissioner shall consider factors indicating organized
10 automobile fraud activity in the district attorney's county,
11 including, but not limited to, the county's level of general
12 criminal activity, population density, automobile insurance
13 claims frequency, number of suspected fraudulent claims, and
14 prior and current evidence of organized automobile fraud
15 activity. Funding priority shall be given to those grant
16 applications with the potential to have the greatest impact on
17 organized automobile insurance fraud activity.

18 (c) All participants of a grant referred to in subdivision (a)
19 shall coordinate their efforts and work in conjunction with the
20 bureau, other participating agencies, and all interested insurers in
21 this regard. Of the funds collected pursuant to this section, 42.5
22 percent shall be distributed to district attorneys, 42.5 percent
23 shall be distributed to the Fraud Division, and 15 percent shall be
24 distributed to the Department of the California Highway Patrol.
25 Funds distributed pursuant to this section to the Fraud Division
26 and to the Department of the California Highway Patrol shall be
27 used to fund bureau and Department of the California Highway
28 Patrol investigators who shall be assigned to work solely in
29 conjunction with district attorneys who are awarded grants. Each
30 grantee shall be notified by the Fraud Division of the
31 investigators assigned to work with the grantee. Nothing shall
32 prohibit the referral of any cases developed by the Fraud
33 Division to any appropriate prosecutorial entity.

34 (d) A grant under this section shall be awarded on the basis of
35 a single application for a period of three years and shall be
36 subject where applicable to the requirements of subdivision (b) of
37 Section 1872.8, except for the requirement that grants be
38 awarded according to population. Continued funding of a grant
39 shall be contingent upon a grantee's successful performance as
40 determined by an annual review by the commissioner. Any

1 redirection of grant funds under this section shall be made only
2 for good cause. The Department of the California Highway
3 Patrol shall submit to the commissioner, for informational
4 purposes only, an annual report on its expenditure of funds under
5 this section in the same format as is required of grantees under
6 this section.

7 (e) There shall be no prohibition against a joint application by
8 two or more district attorneys for a grant award under this
9 section.

10 (f) The Fraud Division shall report to the Governor, the
11 Legislature, and to the committees of the Senate and Assembly
12 having jurisdiction over insurance on the results of the grant
13 program established by this section, including funding distributed
14 to the Department of the California Highway Patrol in the annual
15 report submitted pursuant to Section 12922.

16 (g) For purposes of this section, “organized automobile fraud
17 activity” means two or more persons who conspire, aid and abet,
18 or in any other manner act together, to engage in economic
19 automobile theft as defined in subdivision (f) of Section 1872.8,
20 or to violate any of the following provisions in relation to an
21 automobile insurance claim:

22 (1) Section 650 or 6152 of the Business and Professions Code.

23 (2) Section 750 of the Insurance Code.

24 (3) Section 549, 550, or 551 of the Penal Code.

25 (h) This section shall remain in effect only until January 1,
26 2010, and as of that date is repealed, unless a later enacted
27 statute, that is enacted before January 1, 2010, deletes or extends
28 that date.

29 SEC. 8. Section 10089.83 of the Insurance Code is amended
30 to read:

31 10089.83. (a) On or before August 1 of each year in which
32 this program is in effect, the commissioner shall report to the
33 Governor, the Legislature, and to the committees of the Senate
34 and Assembly having jurisdiction over insurance on the status of
35 the program in the prior year, including statistics about the
36 number of cases suitable for mediation, the number sent to
37 mediation, and the number accepted, as well as declined, by the
38 insurers, and other similar information concerning the operation
39 of the program in the annual report submitted pursuant to Section
40 12922.

1 (b) At six-month intervals, the department shall collect from
2 the mediators with which it contracts for this service the
3 following information: the number of persons to whom
4 mediation was offered, the number of insurers that accepted and
5 declined mediation, the number of settlements, and of those
6 settlements, the number rejected within the three business day
7 cooling off period. For each settlement, the mediation service
8 shall also report the amount initially claimed by the consumer
9 and the amount agreed to be paid, if any, by the insurer or other
10 party.

11 (c) The department may adopt regulations, including reporting
12 requirements, in the commissioner's discretion, to implement this
13 chapter. The regulations shall be adopted as emergency
14 regulations pursuant to Chapter 3.5 (commencing with Section
15 11340) of Part 1 of Division 3 of Title 2 of the Government
16 Code. The adoption of the regulations is deemed necessary for
17 the immediate preservation of the public peace, health or safety,
18 or general welfare.

19 SEC. 9. Section 10133.66 of the Insurance Code, as added by
20 Section 6 of Chapter 723 of the Statutes of 2005, is amended and
21 renumbered to read:

22 10133.661. On or before July 1, 2006, the commissioner,
23 pursuant to his or her authority under Section 12921.1, shall also
24 complete all of the following duties:

25 (a) Provide announcements that inform health insurance
26 consumers and their health care providers of the department's
27 toll-free telephone number that is dedicated to the handling of
28 complaints and of the availability of the Internet Web page
29 established under this section, and the process to register a
30 complaint with the department and to submit an inquiry to it.

31 (b) Establish an Internet Web page located on the
32 department's public Internet Web site dedicated exclusively to
33 processing complaints and inquiries relating to health insurance
34 issues from insureds and their health care providers. The Web
35 page shall provide insureds and their health care providers with
36 information concerning filing a complaint and making an inquiry
37 concerning a health insurer and, at a minimum, shall provide the
38 following information:

39 (1) The department's toll-free telephone number.

40 (2) A list of all health insurers licensed by the department.

1 (3) Educational and informational guides for health insurance
2 consumers and health care providers describing their rights under
3 this code. The guides shall be easy to read and understand and
4 shall be made available to the public, including access on the
5 department's Internet Web site.

6 (4) A separate, standardized complaint form for health care
7 providers to file a complaint.

8 (c) An insured or health care provider may file a written
9 complaint with the department with respect to the handling of a
10 claim or other obligation under a health insurance policy by a
11 health insurer or production agency, or with respect to the alleged
12 misconduct by a health insurer or production agency. The
13 commissioner shall notify the complainant of the receipt of the
14 complaint within 10 business days of its receipt. The
15 commissioner shall make a determination on the complaint
16 within 60 calendar days of the date of its receipt, unless the
17 commissioner, in his or her discretion, determines that additional
18 time is reasonably necessary to fully and fairly evaluate the
19 complaint. The commissioner shall notify the complainant of the
20 final action taken on his or her complaint within 30 days of the
21 final action. The notification shall include a summary explaining
22 the commissioner's reasons for the final action.

23 SEC. 10. Section 12922 of the Insurance Code is amended to
24 read:

25 12922. The commissioner shall, on or before the first day of
26 August in each year, make a report to the Governor, the
27 Legislature, and to the committees of the Senate and Assembly
28 having jurisdiction over insurance containing a tabular statement
29 and synopsis of the reports which have been filed in his or her
30 office and showing, generally, the condition of the insurance
31 business and interests in this state, and other matters concerning
32 insurance. The report shall also contain a detailed verified
33 statement, of the moneys and fees of office received by him or
34 her, and for what purpose.

35 SEC. 11. Section 12961 of the Insurance Code is amended to
36 read:

37 12961. (a) The commissioner shall provide to the Governor,
38 the Legislature, and to the committees of the Senate and
39 Assembly having jurisdiction over insurance an analysis of the

1 following types of actions in the annual report submitted
2 pursuant to Section 12922:

- 3 (1) Medical malpractice actions.
- 4 (2) Toxic substance tort actions.
- 5 (3) Product and design liability actions.
- 6 (4) Tort actions in which a public entity is a defendant.
- 7 (5) Tort actions involving judgments or settlements of one
8 million dollars (\$1,000,000) or more.
- 9 (6) Class action tort actions.
- 10 (7) Defamation and invasion of privacy actions.
- 11 (8) Other categories of tort actions involving commercial
12 liability claims as the commissioner deems necessary.

13 (b) The study may exclude actions in which the only defendant
14 is an individual sued in his or her private capacity. The study
15 may exclude limited civil cases.

16 (c) If any of the information required to be provided by the
17 parties is confidential under any other provision of law or
18 pursuant to any court order, the commissioner shall keep that
19 information confidential and shall limit its analysis of that
20 information to aggregate data or other analyses which will not
21 reveal the identity of the parties.

22 SEC. 12. Section 12962 of the Insurance Code is amended to
23 read:

24 12962. The commissioner shall report to the Governor, the
25 Legislature, and to the committees of the Senate and Assembly
26 having jurisdiction over insurance all of the following in the
27 annual report submitted pursuant to Section 12922:

28 (a) An analysis of the information required by Sections 674.5,
29 1857.7, 1857.9, 1864, 11555.2, and 12963, including, but not
30 limited to, all of the following:

- 31 (1) An aggregate and an average for all insurers for each item
32 of information required by these sections.
- 33 (2) The number of insurers reporting policies written for each
34 class during the calendar year.
- 35 (3) For each class, the number of insurers reporting a
36 combined loss ratio of 100 percent or more, and the number
37 reporting a combined loss ratio of under 100 percent.
- 38 (4) An analysis of adjustments made to loss reserves for prior
39 years.

(5) The change in any item required to be included by paragraphs (1) to (4), inclusive, from the immediately prior year.

(b) An analysis of the activities of the Department of Insurance in implementing the provisions of Proposition 103 on the November 8, 1988, general election ballot, as set forth in Article 10 (commencing with Section 1861.01) of Chapter 9 of Part 2 of Division 1.

(c) Recommendations and proposals, including suggested legislation, to protect consumers from arbitrary insurance rates and practices, to encourage a competitive insurance marketplace, to provide for an accountable Insurance Commissioner, and to ensure that insurance is fair, available, and affordable for all Californians.

(d) An analysis on the results of the program to reduce the number of uninsured motorists and the relationship to affordable private passenger vehicle liability insurance rates pursuant to Sections 4750.2 and 4750.4 of the Vehicle Code.

(e) The requirements of this section shall be satisfied if the analysis required by this section is included in the annual report to the Governor required by Section 12922, and a copy of that report is provided to the Legislature.

SEC. 13. Section 12967 of the Insurance Code is amended to read:

12967. (a) (1) The department shall develop and implement a coordinated approach to gather, review, and analyze the archives of insurers and other archives and records, using onsite teams and the oversight committee, to provide for research and investigation into insurance policies, unpaid insurance claims, and related matters of victims of the Holocaust or of the Nazi-controlled German government or its allies, and the beneficiaries and heirs of those victims, and for losses arising from the activities of the Nazi-controlled German government or its allies for insurance policies issued before and during World War II by insurers who have affiliates or subsidiaries authorized to do business in California. Information compiled shall be placed in a centralized database for the retention of policy and claimant data, and the data shall be used to implement this section and Section 790.15.

(2) The department has an affirmative duty to play an independent role in representing the interests of Holocaust

1 survivors where necessary, including the duty to carry out
2 research, investigations, and advocacy. The department shall
3 cooperate with, participate in, promote coordination with, and to
4 the extent feasible and consistent with the purposes of this
5 section, work jointly with the National Association of Insurance
6 Commissioners and the international commission on Holocaust
7 survivor claims or any other entity involved in the
8 documentation, resolution, settlement, or distribution of
9 insurance claims, including the documentation of unpaid claims
10 and the distribution of proceeds, and the establishment and
11 maintenance of a database to contain information relevant to
12 claimants and documents and historical information. The
13 department shall work to recover information and records that
14 will strengthen the claims of California residents.

15 (3) The department shall employ insurance archaeologists,
16 economists, attorneys, accountants, and other specialists, in this
17 country and in Europe, to implement this section. The department
18 shall work jointly with the National Association of Insurance
19 Commissioners and other organizations for this purpose. The
20 department's cooperation with other states shall be for the
21 purpose of advancing survivors' claims while avoiding
22 duplication of efforts, and shall be dependent upon contributions
23 by other states.

24 (4) In order to assure that Holocaust survivors receive the most
25 aggressive and independent representation possible in pursuit of
26 their historic claims, in contracting with accounting firms, law
27 firms, economists, or others to implement this section, the
28 department shall, to the maximum extent possible, avoid any
29 potential or actual conflict of interest by doing the following:

30 (A) Seek and give preference to firms that are entirely free of
31 any associations with firms representing insurers and nations
32 from which Holocaust survivors are seeking just treatment of
33 their claims.

34 (B) If the department finds that it is necessary to contract with
35 a firm or firms that have conflicts or potential conflicts of
36 interest, those conflicts or potential conflicts of interest shall be
37 disclosed to the commissioner, and the following requirements
38 shall apply:

39 (i) The contract shall contain a provision that expresses a
40 formal commitment on the part of the firm to aggressively pursue

1 a maximum just settlement for Holocaust survivors and their
2 families without regard to any adverse impacts on insurers,
3 affiliates of insurers, nations, or others that may have employed
4 the firm or affiliates of the firm that is contracting with the
5 commissioner to assist in carrying out the commissioner's
6 responsibilities under this section.

7 (ii) If any conflict or potential conflict exists between the firm,
8 or an affiliate of the firm, and an insurer, an affiliate of an
9 insurer, a nation or others directly or indirectly involving
10 Holocaust claims, the firm shall disclose both the fact of the
11 conflict or potential conflict, and all relevant information
12 describing the nature of the conflict or potential conflict.

13 (iii) If a conflict or potential conflict exists between the firm,
14 or an affiliate of the firm, and an insurer, an affiliate of an
15 insurer, a nation, or others that does not directly or indirectly
16 involve Holocaust claims, the firm shall disclose the fact of the
17 conflict or potential conflict and identify the source of the
18 conflict or potential conflict, but need not describe the particular
19 circumstances or facts that create the conflict or potential
20 conflict.

21 (C) The department may take whatever special measures it
22 deems necessary to avoid either the appearance or the reality of
23 conflicts that may undermine public confidence in the integrity of
24 the effort to secure justice for Holocaust survivors.

25 (b) The funding of the activities provided for by this section
26 for the 1998–99 fiscal year shall be from funds transferred
27 pursuant to subdivision (b) of Section 1523 of the Code of Civil
28 Procedure, which funds are hereby appropriated to the
29 commissioner for that purpose. The commissioner shall seek
30 reimbursement of those funds as provided in subdivision (c).

31 Funding for subsequent fiscal years shall be subject to the
32 Budget Act and based on a plan submitted by the commissioner
33 to the Legislature outlining the plan for reimbursement of
34 expenses of the department by affected insurers.

35 Funds made available to implement this section shall be used
36 to develop and implement a coordinated approach to gather,
37 review, and analyze the archives of affected insurance groups,
38 and other archives and records, using onsite teams and the
39 oversight committee. These funds shall also be used to fund the
40 necessary expenses of the Holocaust Era Insurance Claims

1 Oversight Committee established in subdivision (d). The
2 information compiled shall be placed in a centralized database
3 for the retention of policy and claimant data, and that data shall
4 be used by the department to implement this section.

5 (c) (1) Any funds recovered by the department for the purpose
6 of reimbursing the state for costs associated with investigation
7 and enforcement actions under this section shall not be deposited
8 in the Insurance Fund, but instead shall be delivered to the
9 Controller for deposit into the General Fund.

10 (2) To the maximum extent possible, the department shall seek
11 reimbursement for its costs incurred in implementing this section,
12 including funds transferred pursuant to subdivision (b) of Section
13 1523 of the Code of Civil Procedure, from any settlements
14 reached with affected insurers.

15 (d) (1) There is established a seven-member Holocaust Era
16 Insurance Claims Oversight Committee, that shall be known as
17 the oversight committee, and whose members shall be appointed
18 as follows:

19 (A) Four members shall be appointed by the Governor.

20 (B) One member shall be appointed by the President pro
21 Tempore of the Senate.

22 (C) One member shall be appointed by the Speaker of the
23 Assembly.

24 (D) One member shall be appointed by the Commissioner of
25 Insurance.

26 (2) The Governor shall designate one of his or her appointees
27 as the chairperson of the committee.

28 (3) Each member of the committee shall serve at the pleasure
29 of the authority that appointed him or her to serve on the
30 committee.

31 (4) The oversight committee shall be composed of qualified
32 individuals with experience in Holocaust claims cases, similar
33 investigations, archival research, and international law. The
34 oversight committee shall also include Holocaust survivors. No
35 member of the oversight committee shall have a potential or
36 actual conflict of interest, or shall be employed by a person who
37 has a potential or actual conflict of interest.

38 (5) The appointments shall be expedited because of the
39 urgency due to survivors' needs.

1 (6) The oversight committee shall have the following authority
2 and shall do all of the following:

3 (A) Review and make recommendations concerning any
4 insurance settlement negotiation or offer relating to a Holocaust
5 era insurance claim in which the department is involved.

6 (B) Review and make recommendations to the commissioner
7 on the priorities for expenditure of funds and use of resources by
8 the department for Holocaust era insurance claims related
9 activities.

10 (C) Recommend whether a proposed settlement of a Holocaust
11 era insurance claim submitted to the committee pursuant to
12 paragraph (7) is equitable before the department finalizes the
13 settlement agreement.

14 (7) The commissioner, in the event of a proposed settlement of
15 any policy or group of policies relating to Holocaust era
16 insurance claims, shall confer with the committee prior to the
17 department finalizing the settlement agreement. The department
18 may not finalize a proposed settlement of a Holocaust era
19 insurance claim unless the committee, pursuant to subparagraph
20 (C) of paragraph (6), recommends that the proposed settlement is
21 equitable.

22 (e) The department shall report its progress in implementing
23 this section and its participation in the identification and
24 resolution of insurance claims of Holocaust survivors and their
25 beneficiaries and heirs. The report shall also include an overview
26 of current and anticipated expenditures in implementing this
27 section. The department shall report this information to the
28 Governor, the Legislature, and the insurance and budget
29 committees of the Legislature in the annual report submitted
30 pursuant to Section 12922.

31 SEC. 14. Notwithstanding Section 15 of this bill, Sections 1,
32 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, and 13 shall not become operative
33 until January 1, 2007.

34 SEC. 15. This act is an urgency statute necessary for the
35 immediate preservation of the public peace, health, or safety
36 within the meaning of Article IV of the Constitution and shall go
37 into immediate effect. The facts constituting the necessity are:

38 In order to clarify existing provisions of law concerning
39 persons who are permitted to estimate replacement values of a

1 structure, it is necessary that these provisions go into immediate
2 effect.

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